

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**JON CHRISTOPHER EVANS
AND JOINTLY ADMINISTERED
RELATED CASES**

Case No. 09-03763-NPO

DEBTORS

Chapter 7

G&B INVESTMENTS, INC.

PLAINTIFF

VS.

ADV. PROC. NO. 10-00040-NPO

**DEREK A. HENDERSON, TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
JOHN CHRISTOPHER EVANS, ET AL**

DEFENDANTS

**TITLE COMPANIES' MOTION FOR DECLATORY
JUDGMENT AGAINST BANK OF FOREST**

Pursuant to Rule 7001(9) of the Bankruptcy Rules of Civil Procedure and 28 U.S.C. §2201(a), Mississippi Valley Title Insurance Company and Old Republic National Title Insurance Company (“Title Companies”) respectfully move this Court for declaratory judgment as to the rights and obligations of the Title Companies under a title insurance commitment issued to the Bank of Forest (the “Bank”) for the following reasons:

1. The Title Companies provided a contract to issue a title insurance policy to the Bank on August 26, 2009 (the “Commitment”). Through this motion, the Title Companies seek guidance from the Court on the issue of whether the Title Companies are obligated to issue a lender’s title insurance policy to the Bank of Forest despite the undisputed fact that the Bank has not satisfied certain conditions precedent contained in the Commitment.

2. This Courts must look to the four corners of the Commitment to determine the parties' intent. The Commitment contains certain conditions precedent that must occur prior to the issuance of a policy of insurance. It states unequivocally that the Title Companies had no duty to issue a policy unless and until the conditions of their contract were satisfied. These conditions admittedly were not met.

3. Alternatively, the Title Companies seek a declaration that if a policy should be issued under the Commitment that it will be issued to except from coverage any liens or adverse claims attaching between the date of the Commitment and the date of recording of Bank of Forest's deed of trust (September 18, 2009), in accordance with the terms of the Commitment.

4. The Commitment makes clear that any policy issued would except from coverage any encumbrances on this property created between the date of the Commitment and the date that the Bank filed its deed of trust as a matter of record. It is undisputed that he Bank's lien was primed by the intervening claims of G&B Investments, Inc. and Merchants & Farmers Bank.

5. Additionally, the Title Companies also seek a declaration that the Title Companies are not in "bad faith" by seeking declaratory relief in this action.

6. The Title Companies incorporate into this Motion the reasons, arguments, and law addressed in its Memorandum in Support, which is filed separately.

7. In addition, the Title Companies provide the following exhibits in support:

Exhibit A – *Application and Attorney's First Certificate for Tract 4E prepared by Charles Evans and submitted to Mississippi Valley Title Insurance Company;*

Exhibit B – *Commitment for Title Insurance issued by the Title Insurance Companies to the Bank, dated August 26, 2009;*

Exhibit C – *Loan Disbursement from the Bank to Charles Evans and White Oaks;*

Exhibit D – *Deed of Trust executed by White Oaks Investments, LLC in favor of the Bank;*

Exhibit E – *Lis pendens notice filed by G&B;*

Exhibit F – *Lis pendens notice filed by Merchants and Farmers Bank;*

Exhibit G – *Warranty Deed from Hanover to Town Park; and*

Exhibit H – *October 2, 2009 Letter from counsel for the Bank to the Title Insurance Companies.*

FOR THESE REASONS, the Title Companies respectfully request that this Court grant their motion for declaratory judgment, award expenses and attorneys' fees to Title Companies, and grant any additional relief deemed appropriate by this Court.

RESPECTFULLY SUBMITTED, this the 22nd day of December 2010.

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY and OLD REPUBLIC NATIONAL INSURANCE COMPANY

BY: /s/ William C. Brabec
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CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing has been served by electronic filing through the ECF System, which provides electronic notice to all parties of record, including the following:

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This the 22nd day of December, 2010.

/s/ M. Scott Jones

M. Scott Jones